

January 26, 2017

John C. Burson, President and Director
Rocky Mountain Forest Products, Inc.
Rocky Mountain Wood Company, Inc.
CNA Corporation
345 Lower Hampden Rd.
Monson, MA 01057

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)¹ hereby gives notice to the addressed persons² of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is twofold. First, Rocky Mountain Forest Products, Inc., Rocky Mountain Wood Company, Inc., and CNA Corporation (hereinafter collectively referred to as “Rocky Mountain”) are discharging stormwater directly associated with the timber products facility located at 2666 Boston Road, Wilbraham, MA 01095 (the “Facility”), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Rocky Mountain has failed to obtain coverage under any Clean Water Act permit including the

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Chicopee watershed for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. CLF’s membership includes people who live in or near the Chicopee watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

² Based upon CLF’s review of the corporate data available through the Secretary of the Commonwealth’s corporate database, Rocky Mountain Forest Products, Inc., Rocky Mountain Wood Company, Inc., and CNA Corporation do not currently have a registered agent. Michael D. Parker, Esq., the former registered agent for all three corporate entities, resigned in December 2016.

Multi-Sector General Permit³ (“MSGP”) adopted in 2015 by the United States Environmental Protection Agency (“EPA”) for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, to the extent that Rocky Mountain uses water in its industrial processes, Rocky Mountain has failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facility’s process water discharges.

In a letter dated September 27, 2013, CLF previously gave notice to the addressed persons of its intent to file suit against Rocky Mountain Wood Company, Inc. for its violations of the Clean Water Act. These violations involved discharging stormwater into the waters of the United States without a permit, failing to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit adopted in 2008⁴, and failing to comply with the specific requirements of any such permit. CLF repeats and incorporates by reference the allegations contained in the previous notice letter; the violations alleged in that 2013 letter have not been abated or cured and appear to have increased over the last three years.

BACKGROUND

The Chicopee River is a waterbody in the Chicopee watershed. Rocky Mountain discharges into the Chicopee River at Waterbody Segment MA36-23. The Chicopee River (Segment MA36-23) flows downstream into Segments MA36-24 and MA36-25, and thereafter outlets into the Connecticut River (Segment MA34-05). The Connecticut River flows downstream and eventually outlets into Long Island Sound and the Atlantic Ocean. EPA has designated Segments MA36-23, MA36-24, and MA36-25 of the Chicopee River as a habitat for “fish, shellfish, and

³ ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) (June 5, 2015), https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_finalpermit.pdf [hereinafter MSGP].

⁴ ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) (September 29, 2008), https://www3.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

wildlife protection and propagation” and recreation.⁵⁶⁷ EPA has designated Segment MA34-05 of the Connecticut River as a habitat for “aquatic life harvesting,” “fish, shellfish, and wildlife protection and propagation,” and recreation.⁸ The use of these waterbody segments for other purposes remains unassessed at this time.

EPA has designated a downstream segment of the Chicopee River (Segment MA36-25) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.⁹ Segment MA36-25 is impaired for pathogens (*Escherichia coli*, or *E. coli*). Stormwater is a probable source of impairments in Segment MA36-25.¹⁰

EPA has designated a downstream segment of the Connecticut River (Segment MA34-05) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.¹¹ Segment MA34-05 is impaired for pathogens (*Escherichia coli*, or *E. coli*), polychlorinated biphenyls (PCBs), and turbidity. Stormwater is a probable source of impairments in Segment MA34-05.¹²

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.¹³ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater.¹⁴ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁵

⁵ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE CHICOPEE RIVER (SEGMENT MA36-23) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA36-23&p_cycle=2014.

⁶ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE CHICOPEE RIVER (SEGMENT MA36-24) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA36-24&p_list_id=MA36-24&p_cycle=2014.

⁷ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE CHICOPEE RIVER (SEGMENT MA36-35) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA36-25&p_list_id=MA36-25&p_cycle=2014.

⁸ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE CONNECTICUT RIVER (Segment MA34-05) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA34-05&p_list_id=MA34-05&p_cycle=2014.

⁹ See 33 U.S.C. § 1313(d).

¹⁰ See U.S. ENVTL. PROTECTION AGENCY, *supra* note 5.

¹¹ See 33 U.S.C. § 1313(d).

¹² See *supra* note 8.

¹³ See 40 C.F.R. § 122.26(b)(13).

¹⁴ See 40 C.F.R. § 122.26(b)(14).

¹⁵ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

Rocky Mountain is required to apply for coverage under a Clean Water Act discharge permit—such as the MSGP—in order to discharge lawfully. Since at least 2010, Rocky Mountain has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within 90 days after the initial issuance of the MSGP.¹⁶ On September 29, 2008, after expiration of the prior permit, the EPA issued a MSGP requiring all covered facilities to file an NOI for coverage under the 2008 permit. On June 16, 2015, after expiration of the 2008 permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit.

Rocky Mountain has failed to obtain coverage under the current MSGP, the 2008 MSGP, or any other valid authorization, at any time. Therefore, Rocky Mountain is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Rocky Mountain Forest Products, Inc., Rocky Mountain Wood Company, Inc., and CNA Corporation are the persons, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Rocky Mountain Wood Company, Inc. operated the Facility since at least 2001 and currently advertises as the operator of the Facility.¹⁷ CNA Corporation changed its name to Rocky Mountain Forest Products, Inc. in 2002, and Rocky Mountain Forest Products, Inc. has operated the Facility since at least 2002 and currently advertises as the operator of the Facility.¹⁸ CNA Corporation continues to own the land upon which Rocky Mountain Wood Company, Inc. and Rocky Mountain Forest Products, Inc. operate.¹⁹ Rocky Mountain Wood Company, Inc., Rocky Mountain Forest Products, Inc., CNA Corporation, and their shared agents and directors—including but not limited to John C. Burson, President—have ownership and operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

¹⁶ EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995 and later reissued in 2000, 2008, and 2015. *See* 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015); *see also* MSGP, *supra* note 2, at pts. 1.1–1.2.

¹⁷ *See* MASSACHUSETTS DEP’T OF STATE CORP. DIV., ROCKY MOUNTAIN WOOD COMPANY, INC., http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=043542041&SEARCH_TY PE=1 (last visited January 26, 2017).

¹⁸ *See* MASSACHUSETTS DEP’T OF STATE CORP. DIV., ROCKY MOUNTAIN FOREST PRODUCTS, INC., http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=043543285&SEARCH_TY PE=1 (last visited January 26, 2017).

¹⁹ *See* MASSACHUSETTS DEP’T OF STATE CORP. DIV., CNA CORPORATION, http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042459566&SEARCH_TY PE=1 (last visited January 26, 2017).

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the timber products facility located at 2666 Boston Road, Wilbraham, MA 01095.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Rocky Mountain has engaged, and continues to engage, in “industrial activities” and its operations fall under SIC code prefix 24, within the meaning of 40 C.F.R. § 122.26(b)(14).²⁰ Because the Facility engages in industrial activity identified by the SIC code prefix 24 (including but not limited to 2421: general sawmills and planing mills; 2491: wood preserving; 2411: log storage and handling; 2426: hardwood dimension and flooring mills; 2429: special product sawmills, not elsewhere classified; and 2499: wood products, not elsewhere classified) and discharges stormwater associated with industrial activity, Rocky Mountain is required to apply for, obtain coverage, and comply with the requirements of a NPDES permit such as the MSGP. Rocky Mountain has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: buying, producing, processing, storing and selling logs, mulch, bark, firewood, flooring, furniture grade hardwood, wood chips, clean mill chips; the purchase, collection, processing and outdoor storage of bark, wood chips and mulch; the operation and storage of industrial equipment; and driving vehicles on and off the Facility, thereby tracking pollutants off-site. The Facility’s outdoor material piles contain, but are not limited to: large amounts of logs, wood, mulch, sawdust and earth products. All of these activities at the Facility have contaminated the site with industrial pollutants.

Piles of logs, wood, mulch, sawdust, sawmill products, waste, interior access roads, vehicles and heavy equipment, and material processing and handling areas at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the industrial materials and areas, picking up bark and wood debris, total suspended solids (TSS), leachates (which can contain high levels of TSS and biochemical oxygen demand, also known as BOD), oil, grease, metals, solvents, acids, nutrients, pathogens, dissolved solids, trash, fuel and other pollutants associated with the Facility’s operations. The polluted runoff is then conveyed off-site into waters of the United States.

In addition, to the extent that Rocky Mountain uses water in its industrial processes, including but not limited to washing or spraying piles of logs, wood, mulch, sawdust, and earth products,

²⁰ See MSGP, *supra* note 3, at appen. D, Table D-1, Sector A (specifying that timber products facilities identified by the SIC code prefix 24 (including but not limited to 2421: general sawmills and planing mills; 2491: wood preserving; 2411: log storage and handling; 2426: hardwood dimension and flooring mills; 2429: special product sawmills, not elsewhere classified; and 2499: wood products, not elsewhere classified) are subject to the requirements of the MSGP for stormwater discharges).

that water becomes “process wastewater” (also referred to as “process water”) as defined in 40 C.F.R. § 122.2.²¹ Discharges of process wastewater are not covered under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Discharges of process wastewater must instead be covered under an individual NPDES permit. To the extent that the Facility discharges process wastewater, CLF intends to pursue claims related to Rocky Mountain’s unpermitted discharges of process water to waters of the United States.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.²² Rocky Mountain discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility into waters of the United States. Because Rocky Mountain has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).²³ By failing to apply for and comply with the specific requirements of the MSGP, Rocky Mountain is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of 33 U.S.C. § 1311(a). To the extent that Rocky Mountain uses water in its industrial processes, CLF puts Rocky Mountain on notice that CLF intends to pursue claims related to Rocky Mountain’s unpermitted discharges of process wastewater to waters of the United States.

a. Rocky Mountain is discharging stormwater to waters of the United States without a permit.

Rocky Mountain is an industrial discharger and its operations fall under SIC code prefix 24, which means that pursuant to Section 402(p) of the Act, Rocky Mountain is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because Rocky Mountain has operated and continues to operate without a permit under Section 402(p), Rocky Mountain is in violation of Section 301(a) of the Act.

In addition, during storm events, Rocky Mountain’s “industrial activities” at its Facility have resulted in a “discharge of pollutants” within the meaning of 33 U.S.C. § 1362(12) and

²¹ Defining “Process wastewater” as “any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.”

²² 33 U.S.C. § 1311(a).

²³ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; see also MSGP, *supra* note 3, at appen. A (defining the term “discharge of a pollutant” as, *inter alia*, “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’”).

“stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.²⁴ There have been many such storm events since 2010. The Facility is generating pollutants from and through at least the following point sources: piles of logs, wood, mulch, sawdust, earth products, and other materials that are open to the elements; the machines and equipment left outdoors; the vehicles driving on and off the Facility, while additionally conveying pollutants through site grading, surface water channels, subsurface hydrological connections, detention ponds, culverts, sloped surfaces and other conveyances, by the operation of gravity, to the Chicopee River.²⁵ Downstream reaches of the Chicopee River flow into the Connecticut River, and thereafter into Long Island Sound and the Atlantic Ocean. All of the aforementioned waterbodies are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and therefore, “navigable waters,” as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Rocky Mountain is discharging process wastewater to waters of the United States without a permit.

Wastewater associated with industrial processes, including, but not limited to, washing materials and paved surfaces and spraying machinery, is classified as “process wastewater” under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2. Wastewater produced by spraying or washing materials and paved surfaces and spraying machinery can contain a variety of pollutants, including detergents, oil, grease, heavy metals, and other pollutants associated with the Facility’s operations. In addition, solids suspended or dissolved in washwater can pollute ground and surface waters. Process wastewater can have severe and long-term impacts on aquatic environments.

Discharges of process wastewater that result from spraying or washing materials and paved surfaces and machinery are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. To the extent that Rocky Mountain uses water in its industrial processes, Rocky Mountain does not have an individual NPDES permit authorizing the discharge of process wastewater to waters of the United States. Therefore, CLF

²⁴ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

²⁵ These discharges constitute “point sources” as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. CLF specifically puts Rocky Mountain Forest Products, Inc., Rocky Mountain Wood Company, Inc., and CNA Corporation on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2 (stating that the definition of “discharge of a pollutant” “includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man[.]”).

intends to pursue claims related to Rocky Mountain's unpermitted discharges of process wastewater to waters of the United States, namely the Chicopee River.

c. Rocky Mountain is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

Rocky Mountain is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.²⁶ The Facility has a primary SIC code prefix 24 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.²⁷ Rocky Mountain's failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402, 33 U.S.C. § 1342(p) of the Clean Water Act.²⁸

1) Rocky Mountain Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).

As a prerequisite to applying for coverage under the MSGP, Rocky Mountain must develop and implement a Stormwater Pollution Prevention Plan ("SWPPP").²⁹ The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.³⁰ Rocky Mountain has failed to develop and implement a SWPPP in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

2) Rocky Mountain Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, Rocky Mountain must submit a complete Notice of Intent ("NOI") to the EPA.³¹ To complete the NOI, Rocky Mountain is required to determine whether the body of water to which the stormwater discharges is an "impaired" water body, and

²⁶ See MSGP, *supra* note 3, at pts. 1.1–1.2.

²⁷ *Id.* at pts. 1.1, 8.A.

²⁸ A thorough search of EPA's databases indicates that neither Rocky Mountain Forest Products, Inc., Rocky Mountain Wood Company, Inc., nor CNA Corporation has filed an NOI for the Facility. See U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE HISTORY ONLINE, <https://echo.epa.gov/> (last visited January 26, 2017).

²⁹ *Id.* at pt. 5.

³⁰ *Id.* at pt. 5.2.

³¹ *Id.* at pt. 1.2.

whether the Facility discharges any specific pollutants listed on the NOI to that water body.³² Downstream segments of the Chicopee River are classified as “impaired” waterbodies.³³ Additionally, as part of preparing the NOI, the covered Facility must make certain verifications such as ensuring that no harm is done to a species in violation of the Endangered Species Act.³⁴ Rocky Mountain has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) Rocky Mountain Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, Rocky Mountain must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Rocky Mountain must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.³⁵ These control practices must be in accordance with good engineering practices and manufacturer’s specifications.³⁶ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.³⁷ Rocky Mountain has failed to cover the materials and operations that may result in polluted stormwater runoff. Rocky Mountain has not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

4) Rocky Mountain Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, Rocky Mountain must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.³⁸ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.³⁹ These inspections must occur when the Facility is in operation.⁴⁰ The schedule of these inspections must be included in the Facility’s SWPPP and be performed by qualified personnel.⁴¹ Rocky Mountain has failed to conduct the required routine

³² *Id.* at pt. 2.2.2.

³³ See *supra* notes 5–8.

³⁴ See MSGP, *supra* note 3, at pts. 1.1.4.5, 2.3.

³⁵ *Id.* at pt. 2.1.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See MSGP, *supra* note 3, at pt. 3.1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

5) Rocky Mountain Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, Rocky Mountain must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.⁴² The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.⁴³ An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.⁴⁴ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁴⁵ All monitoring data collected under the Permit must be reported to EPA. Furthermore, because the Chicopee River (Segment MA36-25) is an “impaired water” under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), Rocky Mountain must monitor for all pollutants for which the Chicopee River is impaired.⁴⁶ Rocky Mountain has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) Rocky Mountain Must Carry Out the Required Reporting and Recordkeeping.

Rocky Mountain must maintain and submit any and all required monitoring data.⁴⁷ Such monitoring data includes the following: an annual report to EPA which includes the Facility’s findings from the annual comprehensive site inspection and any documentation of corrective actions;⁴⁸ an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁴⁹ and any other required reports under the MSGP.⁵⁰ Rocky Mountain has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

⁴² *Id.* at pt. 6.

⁴³ *Id.* at pt. 6.2.

⁴⁴ *Id.* at pt. 6.1.1.

⁴⁵ *Id.* at pt. 6.1.3.

⁴⁶ *Id.* at pt. 6.2.4.

⁴⁷ *See* MSGP, *supra* note 3, at pt. 7.1.

⁴⁸ *Id.* at pt. 7.5.

⁴⁹ *Id.* at pt. 7.6.

⁵⁰ *Id.* at pt. 7.7.

7) Rocky Mountain Must Comply with the Requirements of MSGP Subpart 8.A

Rocky Mountain must also comply with the sector-specific requirements contained in Subpart A of the MSGP.⁵¹ Subpart A requires timber product facilities to, *inter alia*, implement additional technology-based effluent limits,⁵² meet additional SWPPP and inspection requirements,⁵³ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to timber product facilities.⁵⁴ Rocky Mountain must also minimize contact of stormwater runoff with log, lumber, and wood product storage areas, residue storage areas, loading and unloading and material handling areas, chemical storage areas, and equipment and vehicle maintenance, storage, and repair areas through various control measures such as permanent or semi-permanent covers or roofs, interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.⁵⁵ Rocky Mountain has failed to comply with the requirements of Subpart A of the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which Rocky Mountain Forest Products, Inc., Rocky Mountain Wood Company, Inc., and CNA Corporation own and operate the Facility without permit coverage or discharge stormwater and/or process wastewater without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Rocky Mountain has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2010 on which there has been a measurable precipitation event. Each day on which Rocky Mountain operates its Facility without permit coverage or discharges stormwater process wastewater without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at least 2010, on which Rocky Mountain has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

⁵¹ *Id.* at appen. D, Table D-1, Sector A; pt. 8.A.

⁵² *Id.* at pt. 8.A.3.

⁵³ *Id.* at pt. 8.A.4.

⁵⁴ *Id.* at pt. 8.A.6.

⁵⁵ *Id.* at pt. 8.A.4.3.



These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Rocky Mountain Forest Products, Inc., Rocky Mountain Wood Company, Inc., and CNA Corporation are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Each separate violation of the Act subjects Rocky Mountain to a penalty up to \$37,500 per day per violation for all violations occurring from January 12, 2009 through November 2, 2015, and \$51,570 for penalties that are assessed on or after August 1, 2016, for violations that occurred after November 2, 2015.⁵⁶ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Rocky Mountain to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

⁵⁶ See 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.



Sincerely,

A handwritten signature in blue ink, appearing to read "Zachary K. Griefen", is written over a horizontal line.

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